



AF/3622
(DFW)

THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE HONORABLE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: **Sherwin, et al.**

Application No.: 09/917,143

Examiner: Michael Bekerman

Filed: July 27, 2001

Docket No.: PRAZ 2 00006

For: **AFFINITY SHOPPING PORTAL**

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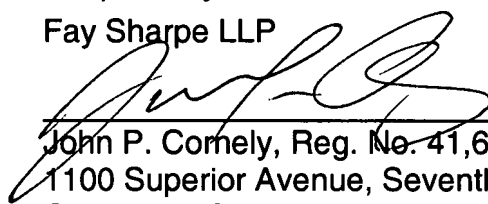
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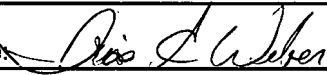
October 9, 2007

Date

Respectfully submitted,

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PATENT APPLICATION

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BRIEF ON APPEAL

Appeal from Group 3622

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TABLE OF CONTENTS

	<u>Page</u>
I. REAL PARTY IN INTEREST	1
II. RELATED APPEALS AND INTERFERENCES	1
III. STATUS OF CLAIMS	1
IV. STATUS OF AMENDMENTS	1
V. SUMMARY OF CLAIMED SUBJECT MATTER.....	1
VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL.....	2
VII. ARGUMENT	3
A. <u>Claim 17 Is Not Anticipated By Bain</u>.....	3
VIII. CLAIMS APPENDIX	6
IX. EVIDENCE APPENDIX	10
X. RELATED PROCEEDINGS APPENDIX	11

I. REAL PARTY IN INTEREST

The real party in interest for this appeal and the present application is CardinalCommerce Corporation, by way of an Assignment recorded in the U.S. Patent and Trademark Office at Reel 012670, Frame 0130.

II. RELATED APPEALS AND INTERFERENCES

There are no prior or pending appeals, interferences or judicial proceedings, known to Appellant, Appellant's representative, or the Assignee, that may be related to, or which will directly affect or be directly affected by or have a bearing upon the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 12-23 are on appeal.

Claims 12-28 are pending.

Claims 12-23 are rejected.

Claims 24-28 are withdrawn from consideration.

Claims 1-11 are canceled.

IV. STATUS OF AMENDMENTS

No Amendment After Final Rejection has been filed.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The invention of claim 17 is directed to shopping portal. The shopping portal includes:

means *[e.g., such as server 12 shown in FIGURES 1]* for maintaining a presence on a communications network *[e.g., such as the Internet 20 shown in FIGURE 1]* such

that shoppers *[e.g., such as consumer 50 shown in FIGURES 1, 2 and 4]* employing the communications network can be received;

means *[e.g., such as log-in page 200 shown in FIGURE 2]* for identifying received shoppers;

means *[e.g., such as a hyper-link and/or the web-page 300 shown in FIGURE 3]* for forwarding shoppers to selected shopping sites *[e.g., such as web-page 400 shown in FIGURE 2]* maintained on the communications network;

means *[e.g., such as server 12 shown in FIGURES 1, 2 and 4 – see also paragraph 0026 on page 6]* for monitoring forwarded shoppers activities at the shopping sites to which the shoppers are forwarded;

means *[e.g., such as server 12 shown in FIGURE 4]* for obtaining click through fees based upon the monitored activities of shoppers at the shopping sites to which the shoppers were forwarded;

means *[e.g., such as server 12 shown in FIGURE 4]* for distributing a portion of each obtained click through fee to an affinity group *[e.g., such as affinity group 40 shown in FIGURE 4]* associated with the shopper responsible for generating the click through fee;

means *[e.g., such as server 12 shown in FIGURE 4]* for reporting to shoppers an amount distributed to the shoppers' associated affinity groups by the distributing means; and

customizing means *[e.g., such as the application 512 supported on the server 12 – see FIGURES 1 and 5]* for a representative *[e.g., such as representative 510 shown in FIGURE 5]* of an affinity group to create a customized web site for the affinity group.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

The following grounds of rejection are presented for review:

Claim 17 stands rejected under 35 U.S.C. §102(e) as being anticipated by Bain (U.S. Patent Publication No. 2001/0053997).

Claim 12 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Bain.

Claims 13-16 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bain in view of Dorff, et al. (U.S. Patent Publication No. 2001/0025263, hereinafter merely referred to as Dorff).

Claims 18-23 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Bain in view of Slatalla (Slatalla, Michelle, "User's guide; Building Web Pages Is Child's Play", The New York Times, May 7, 1998. Pg. G11.).

VII. ARGUMENT

A. Claim 17 Is Not Anticipated By Bain

Claim 17 is directed to a shopping portal which comprises, among other elements, "customizing means for a representative of an affinity group to create a customized web site for the affinity group." In particular, the shopping portal is embodied in a server **12** operated by a coordinator **10**. For example, with reference to FIGURES **1** and **5**, a representative **510** contacts the coordinator **10** over the Internet **20** and accesses a portal creation application **512** supported on the server **12** to create the customized website. See also paragraph **[0038]** on page 10 of the specification. Significantly, as claimed, the customizing means is included in and/or part of the shopping portal. That is to say, the application **512** is supported on the server **12**. Bain fails to show this arrangement of elements.

It is well established law that in order for a reference to anticipate a claim under 35 U.S.C. §102, it must teach every element of the claim and the elements must be arranged as required by the claim. See, e.g., the Manual of Patent Examining Procedure (MPEP) §2131. Bain fails to teach the elements of the claim arranged as required by the claim.

Assuming for the sake of argument, that the preference processing site (PPS) **10** disclosed by Bain otherwise fairly equates with the claimed shopping portal, the PPS **10** does not comprise or include the claimed customizing means. In the Office Action, the Examiner cites to paragraph **[0030]** on page 2 of Bain as teaching the claimed customizing means. However, the Applicants note that the cited passage is taken out of context from the rest of the reference and the elements disclosed by Bain are capriciously rearranged in an attempt to read on the claimed invention. The reference

simply does not contemplate such a random reconstruction. That is to say, in rejecting claim 17, seemingly unrelated text is cite from different points in the reference. In particular, for example, an impermissible piecemeal rejection of the claim is supported by citing to various disconnected and unrelated passages of text which allegedly disclose the combination of claimed elements. Clearly, this is an impermissible rearranging of the teachings of Bain to meet the claims in a way not contemplated by the reference.

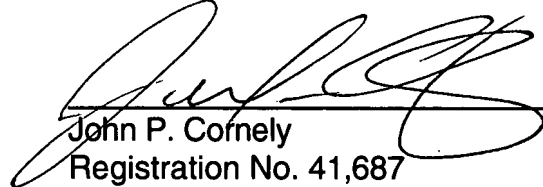
More specifically, paragraph [0030] of Bain refers to parties registering with the PPS 10. Such a party or site is preferably a non-profit organization (NPO). As disclosed in paragraph [0030], the NPO registers their site with the PPS 10 and/or provides a brief summary to the PPS 10. In practice, however, as shown in FIGURE 1, the NPO maintains its own website 40 separate from the PPS 10. In any event, nowhere in paragraph [0030] is there any suggestion that the PPS 10 includes any application or other means which the NPO can use to create and/or customize their own website 40. The fact that the NPO has a website 40 and that they may register it with the PPS 10 does not mean that the PPS 10 includes the claimed customizing means. While the NPO may in fact use any of a variety of tools or applications to create and/or customize their own website 40, nowhere in Bain is it disclosed that the PPS 10 includes and/or supports such a tool or application.

Accordingly, it is respectfully submitted that claim 17 is not anticipated by Bain and the rejection is therefore in error. Moreover, insomuch as claim 17 distinguishes patentably over the prior art, it is respectfully submitted that claims 12-16 and 18-23 depending therefrom also distinguish patentably over the prior art and therefore the rejections of these dependent claims are also in error.

CONCLUSION

For all of the reasons discussed above, it is respectfully submitted that the rejections are in error and that claims 12-23 are in condition for allowance. For all of the above reasons, Appellants respectfully request this Honorable Board to reverse the rejections of claims 12-23.

Respectfully submitted,



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APPENDICES

VIII. CLAIMS APPENDIX

Claims involved in the Appeal are as follows:

1-11. (Canceled)

12. (Previously Presented) The shopping portal according to claim 17, further comprising:

means for communicating to the affinity groups the identity of the shopper responsible for each distribution made by the distributing means.

13. (Original) The shopping portal according to claim 12, wherein if the identifying means does not identify a received shopper that is responsible for a distribution being made by the distributing means, then the communicating means indicates that the distribution is made anonymously.

14. (Original) The shopping portal according to claim 13, wherein the forwarding means permits shoppers to choose which shopping site they are forwarded to from a plurality of different shopping sites.

15. (Original) The shopping portal according to claim 14, wherein the portion distributed by the distributing means is based upon an amount of purchases observed by the monitoring means.

16. (Original) The shopping portal according to claim 15, wherein the communications network is the Internet.

17. (Previously Presented) A shopping portal comprising:
means for maintaining a presence on a communications network such that shoppers employing the communications network can be received;
means for identifying received shoppers;

means for forwarding shoppers to selected shopping sites maintained on the communications network;

means for monitoring forwarded shoppers activities at the shopping sites to which the shoppers are forwarded;

means for obtaining click through fees based upon the monitored activities of shoppers at the shopping sites to which the shoppers were forwarded;

means for distributing a portion of each obtained click through fee to an affinity group associated with the shopper responsible for generating the click through fee;

means for reporting to shoppers an amount distributed to the shoppers' associated affinity groups by the distributing means; and

customizing means for a representative of an affinity group to create a customized web site for the affinity group.

18. (Previously Presented) The shopping portal of claim 17, wherein the customizing means includes a creation application accessible by the representative over the communications network.

19. (Previously Presented) The shopping portal of claim 18, wherein the creation application collects data used to dynamically create a program that provides the customized web site.

20. (Previously Presented) The shopping portal of claim 19, wherein the data is collected via a series of prompts or web pages provided to the representative.

21. (Previously Presented) The shopping portal of claim 19, wherein the collected data includes information about the affinity group for which the customized web site is being created.

22. (Previously Presented) The shopping portal of claim 19, wherein the collected data includes a selection of a template that dictates the physical layout of the customized web site.

23. (Previously Presented) The shopping portal of claim 22, wherein the collected data includes a selection of one or more colors to be used at particular locations in the layout of the customized web site.

24. (Withdrawn) A method for creating a customized shopping portal for an affinity group, said customized shopping portal being accessible by shoppers over a communication network and referring shoppers to shopping sites on the communications network such that upon the shoppers making purchases at the shopping sites a fee is generated at least a portion of which is returned to the affinity group, said method comprising:

- (a) maintaining a server on the communication network;
- (b) supporting a portal creation application on the server, said application being accessible over the communications network;
- (c) collecting data via the application from a representative of the affinity group accessing the application over the communications network; and
- (d) using the collected data to dynamically create a program that provides the customized shopping portal.

25. (Withdrawn) The method of claim 24, wherein step (c) comprises:
providing a series of prompts or web pages to the representative to collect the data from the representative.

26. (Withdrawn) The method of claim 25, wherein the collected data includes information about the affinity group for which the customized shopping portal is being created.

27. (Withdrawn) The method of claim 26, wherein the collected data includes a selection of a template that dictates the physical layout of the customized shopping portal.

28. (Withdrawn) The method of claim 27, wherein the collected data includes a selection of one or more colors to be used at particular locations in the layout of the customized shopping portal.

IX. EVIDENCE APPENDIX

Appellant, Appellant's representative, and/or the Assignee are aware of no evidence submitted under 37 CFR §§1.130, 1.1331, or 1.132 or of any other evidence entered by the Examiner and relied upon by the Appellant in the present appeal. Accordingly, the remainder of this page has been intentionally left blank.

X. RELATED PROCEEDINGS APPENDIX

Appellant, Appellant's representative, and/or the Assignee are aware of no related proceeding in connection with this matter. Accordingly, the remainder of this page has been intentionally left blank.